

STATE OF IOWA, ex rel., THOMAS J. MILLER, ATTORNEY GENERAL OF IOWA (99AG23112),

Plaintiff,

VS.

PETITION AT LAW

EHRlich CONCRETE CONSTRUCTION, INC.,)

Defendant.

Introduction

Parties

3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.

4. Defendant Ehrlich Concrete Construction, Inc., is an Iowa corporation with its home office located at 5900 Saratoga Road, Dubuque, Iowa 52002.

Definitions

5. “Emergency” means “a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property.” Iowa Code § 480.1(3).

6. “Excavation” means “an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures.” Iowa Code § 480.1(4).

7. “Excavator” means “a person proposing to engage or engaging in excavation.” Iowa Code § 480.1(5).

8. “Operator” means “a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property.” Iowa Code § 480.1(8).

9. “Underground facility” means an “item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include

sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties.” Iowa Code § 480.1(10).

Jurisdiction

10. Iowa Code chapter 480, commonly referred to as the “Iowa One Call” statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

11. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

12. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least 48 hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989). The notice for a location inside of a city shall include:

1. a street address or block and lot numbers, or both, of the proposed area of excavation;
2. the name and address of the excavator;
3. the excavator’s telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;
6. the date and time when excavation is scheduled to begin;

7. approximate location of the excavation on the property; and
8. if known, the name of the housing development and property owner.

Iowa Code §§ 480.4(1)(b)(1)-(8).

13. Pursuant to Iowa Code section 480.4(2), the notification center upon receiving notice from an excavator must then immediately transmit the information contained in the notice to each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within 48 hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

14. For purposes of Iowa Code section 480.4, “an excavation commences the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.” Iowa Code § 480.4(1)(d).

15. The only exception to the requirements of Iowa Code section 480.4 is “when an emergency exists.” Iowa Code § 480.4(6).

16. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed ten thousand dollars for each violation for each day the violation continues, up to a maximum of five hundred thousand dollars.

17. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

18. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

Facts

19. On or about February 25, 2004, Ehrlich conducted an excavation to install a basement at 2504 Amber Ridge, Asbury, Dubuque County, Iowa.

20. Ehrlich did not contact the One Call Notification Center regarding this excavation location and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Ehrlich proceeded with the excavation of the basement without any underground facilities having been located and marked on the property.

21. Aquila, Inc. is the owner and operator of an underground natural gas pipeline which runs across the property located at 2504 Amber Ridge, Asbury, Iowa. The pipeline is made of PVC pipe, 2-inches in diameter under 25 pounds per square inch (psig) of pressure. The buried pipeline provides natural gas service to several residences. Natural gas is an explosive and highly flammable substance.

22. The City of Asbury is the owner and operator of an underground 8-inch water main located 10 feet from the street curb along the length of the lot at 2504 Amber Ridge, Asbury, Iowa.

23. During the excavation, Ehrlich's backhoe missed hitting the natural gas pipeline by only a few feet.

24. During the excavation, Ehrlich's backhoe hit and damaged the city's water main. The damage caused the water main to leak water at the rate of approximately 2000 gallons per minute. The leak caused loss of drinking water to about 500 city customers for four hours while

the main was repaired. The leak also caused depressurization of the municipal water system requiring the entire system to be flushed after the repairs.

25. Digging to install a basement constitutes “excavation” as defined in Iowa Code section 480.1(4).

26. At all material times hereto, Ehrlich was an “excavator” as defined in Iowa Code section 480.1(5).

27. A buried natural gas pipeline is an “underground facility” as defined in Iowa Code section 480.1(10).

28. A buried water main pipeline is an “underground facility” as defined in Iowa Code section 480.1(10).

29. At all material times hereto, there was no “emergency,” as defined in Iowa Code section 480.1(3), that would exempt Ehrlich from the requirement that it contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

Violations

30. On or about February 25, 2004, Ehrlich Concrete Construction, Inc. engaged in an excavation at 2504 Amber Ridge, Asbury, Dubuque County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8).

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel, Thomas J. Miller, Attorney General of Iowa, requests that the Court:

- a. assess a civil penalty against Defendant Ehrlich Concrete Construction, Inc. pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(b)(1)-(8), not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and
- b. issue a permanent injunction enjoining Defendant Ehrlich Concrete Construction, Inc. from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



DAVID R. SHERIDAN, PK1000107
Assistant Attorney General
Environmental Law Division
Lucas State Office Building
321 E. 12th St., Ground Floor, Room 018
Des Moines, Iowa 50319
Phone: (515) 281-5351
Fax: (515) 242-6072
E-mail dsherid@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF